



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EXPORT DEVELOPMENT CANADA :
 :
Plaintiff, :
 :
- against - :
 :
EAST COAST POWER & GAS, LLC, :
 :
Defendants. :
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21-CV-3758 (NRB) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves the pending dispute regarding East Coast's privilege claims. The Court has considered all prior proceedings and filings, the documents filed for in camera review pursuant to the order at Dkt. 66, the parties' arguments during multiple conferences, including most recently March 21, 2024, and the parties' submissions following that conference.

1. The following documents are properly claimed as privileged/protected: Numbers 83, 94, 117, 118 cover email only.

2. East Coast has not met its burden to sustain its privilege/work-product claims for the following documents: Numbers 16, 17, 71, 75, 82, 85, 90, 118 attachment only; 119, 120, 122. Most or all of those documents are financial analyses and business assessments. Nothing on the face of those documents reflects legal advice, requests for legal advice, or attorney work product (other than, potentially, handwritten notes). Only to the extent any of those documents contain handwritten attorney notes that were communicated to a client or prepared in anticipation of litigation, those notes may be redacted.

3. East Coast shall review all remaining documents listed on its privilege log and produce documents consistent with the above rulings and shall provide a revised privilege log reflecting the documents removed and produced. East Coast shall do so by April 3, 2024.

4. The Court rejects EDC's argument that East Coast cannot claim attorney-client privilege for documents responsive to document request 49; the email at Dkt. 70-1 is not inconsistent with the Levitt Law Firm's representation of East Coast for matters in addition to the two subpoenas for which it was authorized to accept service. That said, East Coast must consider each document withheld in response to document request 49 in the same manner and for the same purpose and within the same time as number 3 above.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: March 22, 2024
New York, New York

Copies transmitted this date to all counsel of record.